

JPA File No.: 06-068 I  
AG Contract No.: KR07-0133TRN  
Project No.: 179 CN 310.1  
Project: Morgan Road Realignment with  
Roundabout  
Section: MP 312.1  
TRACS No.: H3414 03C / 02R / 12D  
Budget Source Item No.: 15107

## INTERGOVERNMENTAL AGREEMENT

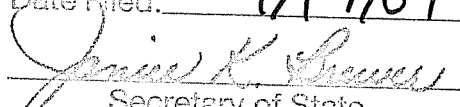
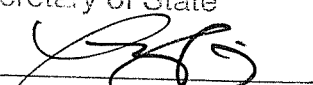
BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF SEDONA

**THIS AGREEMENT** is entered into this date April 17<sup>th</sup>, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SEDONA, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties".

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Incident to ongoing improvements to State Route 179 (SR 179) in the area of Morgan Road, the State and City agree to participate in the acquisition of right-of-way, design and construction of various roadway improvements and modifications. The State will realign Morgan Road to connect with the planned roundabout at MP 312.1, for which the City will pay for the 4<sup>th</sup> leg and all city street realignments, hereinafter referred to as the "Project". The City will provide the estimated funding for acquiring right-of-way, design and construction for the Project and shall be responsible for the roadway maintenance of Morgan Road within their right-of-way. The State will administer the acquisition of necessary right-of-way, construction and design of the Project. The purpose of this Agreement is to define each party's responsibility associated with the Project.
4. The Parties hereto agree to and acknowledge the following conditions: **a)** the estimated monetary amounts referenced in this Agreement are subject to change and could change substantially before completion of the Project; **b)** the Parties shall perform their responsibilities consistent with this Agreement; and **c)** any change or modification to the Project will only occur with the mutual written consent of the Parties.

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 28866  
Filed with the Secretary of State  
Date Filed: 4/17/07  
  
Secretary of State  
By: 

## **II. SCOPE OF WORK**

### **1. The State shall:**

a. Provide design plans, specifications and other such documents and services required for construction bidding and construction, and submit same to the City for their review, incorporating their comments as appropriate.

b. Prior to the Bid Advertisement date currently estimated to be March 1, 2007, invoice the City for its share of the Project cost, currently estimated at \$266,874.00, per Exhibit "A" attached hereto and made a part hereof. These costs include, but are not limited to, design, construction and construction engineering, right-of-way acquisition, mobilization, traffic control, and surveying. This amount includes fixed costs of \$13,890.00 for construction engineering and engineering administration only. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between the estimated and actual costs.

c. Advertise for bids and award one or more construction contract(s) for the Project. Administer contract(s) for the Project and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by Project delays attributable to the State.

d. Prior to award of the construction contract for the Project, and the approval of same by resolution of the State's Transportation Board, acquire the necessary right-of-way for Project.

e. Upon the approval by Resolution of the State Transportation Board, and as mutually agreed to by the State and City, abandon to the City, jurisdiction, ownership, and maintenance responsibilities of the right-of-way depicted on Exhibit "B," attached hereto and made a part hereof.

f. Upon completion, formally approve and accept the Project in conjunction with the City and notify the City in writing that the Project has been constructed in accordance with the Project documents and has been satisfactorily completed.

g. Maintain facilities under this Agreement and within State's right-of-way per JPA 06-067, attached hereto by reference.

### **2. The City shall:**

a. Review the design documents required for construction of the Project, and provide comments to the State as appropriate.

b. Prior to the Bid Advertisement date currently estimated to be March 1, 2007, and upon receipt of an invoice from the State, remit to the State the estimated amount of \$266,874.00 per Exhibit "A" which includes, but not limited to, design, construction and construction engineering, right-of-way acquisition, mobilization, traffic control, and surveying. This amount includes fixed costs of \$13,890.00 for construction engineering and engineering administration only. Once the Project costs have been finalized, and upon receipt of an invoice from the State, remit an amount equal to the excess of actual costs over estimated costs, if any.

c. Grant the State, without charge, cost, or additional documents and agreements, permission to enter City's lands as required to conduct all construction and pre-construction activities related to the Project, including and without limitation, temporary construction easements, or temporary rights-of-entry to accomplish, among other things, soil and foundation investigations.

d. Be responsible for contractor claims for additional compensation caused by Project delays attributable to the City.

e. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work necessitated by a change in the Project's scope of work. Such additional costs shall require prior approval of the State. All costs attributable to any engineering change orders requested by the City shall be the sole responsibility of the City.

f. Be responsible for all costs incurred by the State, should the City withdraw its proposed plans for whatever reason. This responsibility includes costs up to the time of withdrawal, unless the reason for the City cancellation is due to the State's failure to comply with its obligations herein.

g. Reimburse the State for its actual cost to acquire any and all additional right-of-way needed for the Project, whether through voluntary sale or eminent domain (condemnation) proceedings, including, without limitation, customary real estate closing costs, or the cost incurred by the State to prosecute such condemnation cases to final judgment. In the event unforeseen conditions or circumstances increase the cost of said work necessitated by a change in the Project's scope of work, such additional cost shall require prior approval of the State. All costs attributable to any engineering change orders requested by the City shall be the sole responsibility of the City.

h. Upon the approval by Resolution of the State Transportation Board, and as mutually agreed to by the State and City, waive the four-year advance notification requirements of Arizona Revised Statutes Section 28-7209 and accept ownership, jurisdiction, and maintenance responsibilities for the right-of-way depicted in Exhibit "B".

i. Maintain all facilities in the returned right-of-way depicted in Exhibit "B".

j. Maintain facilities under this Agreement and within State's right-of-way per JPA 06-067.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements; provided herein. However, any provisions for maintenance, provided by the City, shall be perpetual. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty-days (30) written notice to other party. It is understood and agreed that, in the event the City cancels this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no liability obligation under this Agreement in association with the Project work requested by the City provided herein, save that allowed pursuant to Arizona Revised Statutes § 28-401 for the construction of said work. The parties to this Agreement agree that the State of Arizona shall be indemnified and held harmless by the City for the vicarious liability of the State as a result of entering into this Agreement. Each party to this contract is responsible for its own negligence.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

City of Sedona  
Attn: Public Works Director  
102 Roadrunner Drive  
Sedona, Arizona 86336  
(928) 204-7132  
(928) 204-7105 Fax

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

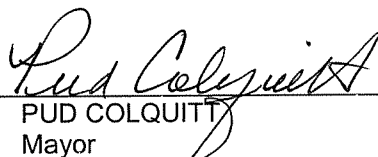
9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

10. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

---


IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

**CITY OF SEDONA**

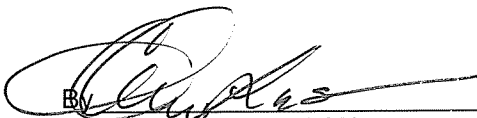
By   
PUD COLQUITT  
Mayor

**STATE OF ARIZONA**

Department of Transportation

By   
DOUGLAS A. FORSTIE, P.E.  
Deputy State Engineer, Operations

ATTEST:

  
CHERRY LAWSON  
Clerk

RESOLUTION NO. 2007-10

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION REGARDING THE PROPOSED REALIGNMENT OF MORGAN ROAD IN CONNECTION WITH PHASE 2 OF THE HIGHWAY 179 IMPROVEMENT PROJECT, AND PROVIDING AUTHORIZATION FOR THE MAYOR TO EXECUTE SAID AGREEMENT.**

WHEREAS:


The City of Sedona desires to enter into an intergovernmental agreement with the Arizona Department of Transportation setting forth their mutual obligations in connection with the proposed realignment of Morgan Road at the new roundabout at MP 312.1,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA, ARIZONA, THAT:


The City of Sedona, through its Mayor and Council, hereby approves the Intergovernmental Agreement with the Arizona Department of Transportation, **JPA File No. 06-068 I** setting forth their mutual obligations in connection with the proposed relocation of City utilities related to the Highway 179 Improvement project.

The Mayor is authorized to execute said agreement on behalf of the City of Sedona, Arizona.

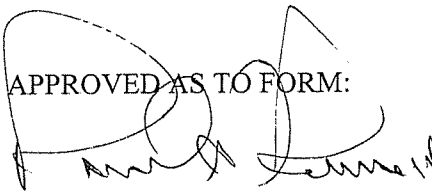
PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 27<sup>th</sup> day of March, 2007.

  
Pud Colquitt, Mayor

ATTEST:

  
Cherry Lawson, City Clerk

APPROVED AS TO FORM:

  
City Attorney

3/29/07

**ATTORNEY APPROVAL FORM FOR THE CITY OF SEDONA**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF SEDONA, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 29th day of March, 2007.

  
\_\_\_\_\_  
City Attorney

City of Sedona  
Morgan Road Realignment Costs  
JPA 06-068

EXHIBIT A

| Item                              | Cost      |                  |           | Description   |
|-----------------------------------|-----------|------------------|-----------|---|
|                                   | *Design   | Construction     | Total     |   |
| Morgan Road Realignment           | \$8,418   | \$56,120         | \$64,538  | Realign the existing Morgan Road to intersect with Arrow Drive. *Design 15% of construction cost. |
|                                   | SubTotal: | \$8,418 \$56,120 | \$64,538  |   |
| Maintenance of Traffic            | \$0       | \$4,490          | \$4,490   | 8% of Construction Cost   |
| Construction Surveying and Layout | \$0       | \$1,122          | \$1,122   | 2% of Construction Cost   |
| Mobilization                      | \$0       | \$5,612          | \$5,612   | 10% of Construction Cost  |
|                                   | Subtotal  | \$8,418 \$67,344 | \$75,762  |   |
| Construction Engineering          | \$0       | \$10,102         | \$10,102  | Negotiated fixed cost   |
| Engineering Administration        | \$421     | \$3,367          | \$3,788   | Negotiated fixed cost   |
| Design and Construction Total     | \$8,839   | \$80,813         | \$89,652  |   |
| Right-of-Way Cost                 |           |                  | \$177,222 | Per ADOT R/W November 9, 2006.  |
| Total                             |           |                  | \$266,874 |   |

PROJECT NO: STP-TEA-179-A(002)B  
TRACS NO: 179 CN 310 H3414 03C

**City of Sedona**  
**Morgan Road Realignment Costs**  
**JPA 06-068**


Engineer's Estimate Version  
JPA 06-068  
Date: January 2007

| Item No                 | Item Description  | Unit   | Quantity | Unit Price | Amount   |
|-------------------------|---|--------|----------|------------|----------|
| MORGAN ROAD REALIGNMENT |   |        |          |            |          |
| 2020164                 | REMOVE (ASPHALTIC CONCRETE REMOVAL AND RESTORATION)(DETAIL K) | L.FT.  | 291      | \$10.00    | \$2,910  |
| 2050001                 | GRADING ROADWAY FOR PAVEMENT                                  | SQ.YD. | 1,772    | \$10.00    | \$17,720 |
| 3030022                 | AGGREGATE BASE, CLASS 2                                       | CU.YD. | 197      | \$50.00    | \$9,850  |
| 4040111                 | BITUMINOUS TACK COAT  | TON    | 1        | \$550.00   | \$550    |
| 4040116                 | APPLY BITUMINOUS TACK COAT                                    | HOURL  | 2        | \$150.00   | \$300    |
| 4040125                 | FOG COAT  | TON    | 1        | \$600.00   | \$600    |
| 4040163                 | BLOTTER MATERIAL  | TON    | 2        | \$50.00    | \$100    |
| 4040230                 | ASPHALT BINDER (PG 64-22) FOR AC (3/4) EP (SPECIAL MIX)       | TON    | 15       | \$600.00   | \$9,000  |
| 4160004                 | ASPHALTIC CONCRETE (3/4" MIX) (END PRODUCT) (SPECIAL MIX)     | TON    | 291      | \$50.00    | \$14,550 |
| 4160031                 | MINERAL ADMIXTURE   | TON    | 6        | \$90.00    | \$540    |

**Morgan Road Realignment Subtotal**

**\$56,120.00**



|   |  |  |
|---|--|--|
| <p>TERRY GODDARD<br/>Attorney General</p> | <p><br/><b>OFFICE OF THE ATTORNEY GENERAL</b><br/>STATE OF ARIZONA</p> | <p>CIVIL DIVISION<br/>TRANSPORTATION SECTION<br/>Writer's Direct Line:<br/>602.542.8855<br/>Facsimile: 602.542.3646<br/>E-mail: Susan Davis@azag.gov</p> |
|---|--|--|

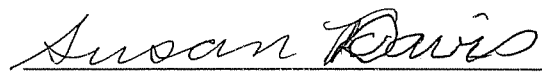
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR07-0133TRN (**JPA 06-068-I**), an Agreement between public agencies, i.e., The State of Arizona and City of Sedona, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: April 10, 2007

TERRY GODDARD  
Attorney General

  
\_\_\_\_\_  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:1008247  
Attachment